



30 Bank Street
New Britain, CT 06051
T. (860) 223-4400
F. (860) 223-4488

www.ctbar.org

**Testimony of Scott M. Harrington
Connecticut Bar Association Litigation Section**

**In OPPOSITION
House Bill No. 5183
“An Act Concerning Attorney Fee Agreements in Municipal Tax Appeals”**

**Planning and Development Committee
February 19, 2016**

My name is Scott Harrington. I am a partner in the law firm of Diserio Martin O'Connor & Castiglioni, LLP located in Stamford, Connecticut. I have been admitted to the Connecticut Bar for more than 28 years. I presently serve as Chair of the Litigation Section of the Connecticut Bar Association. I previously served as Secretary/Treasurer and Vice Chair of the Litigation Section. Approximately 798 members of the Connecticut Bar Association currently are members of the Litigation Section.

The Tax Law Section of the Connecticut Bar Association joins in the Litigation Section's testimony in opposition to the Bill.

I submit this testimony, in my capacity as Chair, on behalf of the Litigation Section of the Connecticut Bar Association in opposition to House Bill No. 5183, “An Act Concerning Attorney Fee Agreements in Municipal Tax Appeals” (the “Bill”). The Bill seeks to prohibit contingency fee agreements between an attorney and a property owner who seeks to appeal a property tax assessment to the Superior Court when the property subject to the appeal is a “commercially used property” with an assessed value of \$1,500,000 or more.

The Litigation Section opposes this Bill for several reasons. First, the Bill unnecessarily seeks to restrict access to the Superior Court for a class of taxpayers – those owning “commercially used property” with values of \$1,500,000 or more – by preventing those taxpayers from negotiating reasonable contingency fee agreements with their attorneys to pursue an otherwise meritorious appeal in the Superior Court. There appears to be no rational basis for seeking to prohibit contingency fee agreements for commercially used properties valued at \$1,500,000 or more. Often, owners of commercial properties do not have the budget to seek legal redress to challenge an erroneous assessment absent the use of a contingent fee agreement. Furthermore, since in most leases of commercial buildings, property tax increases are passed down to the tenants, the inability of a commercial owner to challenge an erroneous assessment will ultimately burden even smaller businesses. Moreover, the term “commercially used” property is not defined in the statute, and arguably could be read to apply to residential properties from which a homeowner operates a small business.



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Furthermore, the Bill seeks to interfere with the rights of owners of commercial properties to contract with attorneys in a reasonable manner commensurate with their own legal needs and financial conditions without explaining or setting forth any reasonable basis for why the legislature needs to do so. The Bill does not seem to be motivated by a desire to protect commercial property owners in their negotiation of fee agreements with their clients. There is no suggestion that the Bill was prompted by any concern for any perceived problem in the relationship between counsel and client in these types of cases. There certainly is no desire to protect consumers, as the Bill only applies to commercial property owners. Rather, the motivation seems to be to make it more difficult for commercial property owners to bring meritorious tax assessment appeals by obligating them to hire counsel on an hourly fee basis to do so. There is no rational reason presented why the legislature should seek to interfere with the rights of clients to negotiate reasonable contingency fee agreements with their counsel in connection with these types of tax appeals.

I am aware of some arguments that this Bill is intended to reduce frivolous appeals. That argument appears to make little sense. An attorney agreeing to a negotiated contingency fee agreement with a potential commercial property owner seeking to appeal an erroneous assessment has no incentive whatsoever to bring an appeal which lacks merit as the attorney will not recover any fee if the owner loses the appeal. In fact, the contingency fee agreement itself serves as the initial screening of an appeal for merit since the attorney needs to evaluate the case properly or risk loss of an appeal and no recovery of a fee.

In conclusion, the Litigation Section opposed the Bill because it unnecessarily restricts a certain class of taxpayers from seeking legal redress in the Superior Court to overturn erroneous tax assessments. For these reasons, the Litigation Section of the Connecticut Bar Association, along with its Tax Law section, strongly opposes passage of House Bill No. 5183, "An Act Concerning Attorney Fee Agreements in Municipal Tax Appeals."

Thank you for your consideration.